

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KALOM MCCOY,

Petitioner,

v.

GENA JONES, Warden,

Respondent.

No. 2:23-cv-0902 DAD CSK P

ORDER

Petitioner, a state prisoner, proceeds through counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 29, 2024, the district court granted petitioner's motion for a stay pursuant to Kelly v. Small, 316 F.3d 1063 (9th Cir. 2003), and directed petitioner to submit an amended petition deleting unexhausted claim three (ineffective assistance of counsel within fourteen days. (ECF No. 18 at 4.) On April 15, 2024, petitioner filed an amended petition omitting claim three. (ECF No. 20.)

Therefore, pursuant to the district court's order, this action is stayed pursuant to Kelly to allow petitioner an opportunity to complete exhaustion of the ineffective assistance claim in state court. (ECF No. 18 at 4.) Once the ineffective assistance of counsel claim is exhausted, petitioner shall notify this Court of such exhaustion by filing a motion to lift the stay and by filing

1 a second amended federal petition with the newly exhausted claim no later than thirty days after
2 the California Supreme Court addressed such claim.

3 Accordingly, IT IS HEREBY ORDERED that:


4 1. This action is stayed pending exhaustion of state court remedies with respect to
5 petitioner's ineffective assistance of counsel claim;

6 2. Once the ineffective assistance of counsel claim is exhausted, petitioner shall notify
7 this Court of such exhaustion by filing a motion to lift the stay and by filing a second amended
8 federal petition with the newly exhausted claim no later than thirty days after the California
9 Supreme Court addressed such claim;

10 3. This action shall not proceed further unless and until petitioner files a motion to lift the
11 stay; and

12 4. The Clerk of the Court is directed to administratively close this case.

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14 Dated: April 16, 2024

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16 CHI SOO KIM
17 UNITED STATES MAGISTRATE JUDGE

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